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ATTORNEYS AT LAW

**A SIMPLE GUIDE TO UNDERSTANDING
CALIFORNIA MECHANICS' LIEN LAWS**

**PRESENTED TO:
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I. OVERVIEW

A. What is a Mechanics' Lien?

1. Provides a security interest to those who improve or enhance the property of others (applies to land and structure)
2. Based upon theory of unjust enrichment: property owner has been unjustly enriched by the efforts of another, therefore, we are going to provide a mechanism by which the individual (or entity) can recoup the reasonable value of services or improvement

B. Why useful?

1. Direct remedy against the property owner
2. Cloud on title
3. Prevents owner from selling property
4. Leverage to get paid

C. Remedial constitutional and statutory remedy liberally construed in favor of the claimant

1. California Constitution, Article 14, § 3: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."
2. Codified at Civil Code § 8000, et seq.

II. MECHANICS' LIENS

A. Who is entitled to a Mechanics' Lien (§8400 – 8404)

1. Generally: Anyone who furnishes labor, service, equipment or material for use in and which is used in a work of improvement
 - a. Contractors, Subcontractors and sub-subcontractors
 - b. Material suppliers
 - c. BUT NOT suppliers to suppliers
2. Specifically includes Design Professionals (§8400(f))
 - a. Architects
 - b. Registered Engineers
 - c. Licensed Land Surveyors

B. Requirements

1. Work of improvement (§8050(a))
 - a. Construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a

building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.

- b. Seeding, sodding, or planting of real property for landscaping purposes.
- c. Filling, leveling, or grading of real property.
- d. Site improvements are “work of improvement” (§8050(b))
 - i. Demolition or removal
 - ii. Drilling test holes
 - iii. Grading, filling or otherwise improving real property or a street, highway or sidewalk in front of or adjoining the real property
 - iv. Construction or installation of sewers or other public utilities
 - v. Construction areas, vaults, cellars, or rooms under sidewalks

But Note: Site improvements provided pursuant to a direct contract *separate* from the direct contract for the remainder of the work of improvement is deemed a *separate work of improvement*. Therefore, commencement of the site improvement is *not* commencement of the remainder of the work of improvement. (§8454)
(This is one of the favorite defenses for institutional lenders looking to attack lien priority)

- 2. Direct contribution for use or consumption
- 3. Permanent, not temporary
- 4. Work must have started – shovel to earth
- 5. If contract with *Owner or Reputed Owner*, MUST still serve Preliminary Notice on Construction Lender. (§8200(e)(2))
Note: Having a contract with the owner does NOT exempt the claimant from providing Preliminary Notice to the *lender*. The rule pre-July 2012 exempted the *contractor* from the Preliminary Notice requirement (§3097(b)). The courts defined “contractor” as the prime or general contractor. Now, *all* claimants must provide Preliminary Notice to the lender.

(This is another favorite defense for institutional lenders because the failure to provide Preliminary Notice to the lender is fatal to enforcing the mechanics’ lien. (§8410))

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6. If contract with someone other than owner
 - a. MUST serve Preliminary Notice (formally known as 20-Day Preliminary Notice)
 - b. Served certified mail, return receipt requested upon
 - i. Owner
 - ii. General Contractor
 - iii. Contractor with whom client contracted
 - iv. Lender (if construction lender is involved)
 - c. If direct contract with owner, must serve Preliminary notice on the construction lender (if any)
 - d. Design professionals MUST serve preliminary notice within 20 days of commencement of work to have a valid mechanics' lien for services furnished OR to be furnished
 - i. Section 8204(b): A design professional who has furnished services for the design of the work of improvement and who gives a preliminary notice not later than 20 days after the work of improvement has commenced *shall be deemed to have complied with section 8200* with respect to the design services furnished, or to be furnished.
 - e. But Note: If a claimant does NOT give preliminary notice within 20 days of first furnishing work or commencement of the work of improvement, that claimant is NOT precluded from giving notice at a later time. However, the lien amount will only cover *work performed within 20 days prior to the service of the preliminary notice.*

C. What can be included

1. Contract price or reasonable value of services, whichever is *less*
2. Interest is recoverable, but cannot be included as direct amount on lien – “plus interest thereon at __% from (date of contract or date of last payment) – becomes recoverable on Foreclosure Action

D. What cannot be included

1. Attorney’s fees
2. Delay damages

E. Contents of lien

1. Amount (after deducting all credits and offsets)
2. Name of Owner or reputed owner

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3. General Statement of labor, services, equipment and/or materials furnished
4. Who you contracted with
5. Description of site
 - a. Legal Description
 - b. APN: Assessors Parcel Number
 - c. Can use property address, but not best
6. Mailed to owner certified mail, return receipt requested
7. Statutory Notice Language
8. Verified (Not required to be notarized, but doesn't hurt)
9. Filed with County Recorder where property is located

F. STRICT TIMING REQUIREMENTS

1. Contract with Owner
 - a. Notice of Completion recorded: 60 Days
 - b. Notice of Cessation: 60 Days
 - c. Work Completed (§8180): 90 Days
 - i. Actual completion of the work or improvement
 - ii. Occupancy or use by owner accompanied by cessation of labor
 - iii. Cessation of labor for a continuance period of 60 days
 - iv. Recordation of notice of cessation after cessation of labor for a continuous period of 30 days
 - v. Acceptance of public agency
 - vi. Acceptance of work by owner **NO LONGER QUALIFIES AS COMPLETION OF WORK!**
2. Contract with other than owner (i.e., subconsultant to Architect)
 - a. Notice of Completion recorded: 30 days
 - b. Notice of Cessation: 30 days
 - c. Work Completed: 90 days

G. Perfecting and Enforcing Lien

1. **MUST FILE FORECLOSURE ACTION WITHIN 90 DAYS OF RECORDING THE LIEN**
 - a. Strictly enforced
 - b. If you miss deadline, lien rights terminated
 - c. If miss deadline, and still time to re-record lien, do it!
 - d. Lien expires by operation of law if Foreclosure Action not timely filed
2. Filed in County where property is located

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- a. If you file in wrong county, and 90 days thereafter pass, cannot re-file in proper county = lose lien rights!
- 3. Lien is a cumulative remedy so include all appropriate causes of Action
- 4. Must also file and record a Lis Pendens within 20 days of filing
- 5. Trial within 2 years of filing

H. Mechanics' Lien Priorities

- 1. There is *NO* priority between competing mechanics' lien claimants (exceptions are site improvements, separate "works of improvement")
- 2. Relation-back: mechanics' lien has priority over *any* lien that (a) attaches after *commencement of the work of improvement* or (b) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice (exception: a mortgage or deed of trust that is otherwise subordinate takes priority over a mechanics' lien for work provided *after* recordation of a *payment bond* that refers to the mortgage or deed of trust AND is in an amount not less than 75% of the principal amount of the mortgage or deed of trust.
- 3. Site improvements: *CAN* take priority over prior recorded construction loan if loan given for "sole or primary purpose of financing the site improvement." (§8458(a)(3)) (exceptions for funds in control of lender OR payment bond not less than 50% of the principal amount of the mortgage or deed of trust recorded *before* completion of the work of improvement)

III. DESIGN PROFESSIONAL'S LIEN

- A. Exclusive to design professionals – Architects, Registered Engineers and Licensed Land Surveyors
- B. Statutory Remedy for services on work of improvement where work has yet to be commenced
- C. Does not apply to single family residences where costs are less than \$100,000
- D. Does not affect Mechanics Lien rights
- E. Requirements
 - 1. Written contract with *Owner*
 - 2. Governmental approval
 - a. Building Permit
 - b. Tentative Tract Map
 - c. Get creative
 - 3. Default on payment or refusal to pay upon demand

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4. 10-Day written demand for payment
 - a. Notice of intent to file lien
 - b. Amount of claim/lien
 - c. Demand for payment
 - d. Sent to owner - certified mail, return receipt
5. File lien with County Recorder
6. Filed within 90 days of either:
 - a. Knowledge landowner not commencing
 - b. Reason to know landowner not commencing
- F. Foreclosure action filed within 90 days
- G. Starting work automatically negates lien
 1. Can now convert recorded design professional lien into mechanics' lien (§8319)
 2. Requirements
 - a. Design professional lien expires due to work starting
 - b. Lien remains fully or partially unpaid
 - c. Record mechanics' lien with 30 days of expiration of design professional lien
 - d. mechanics' lien states that it is a converted design professional lien
- H. Design Professionals' Lien Priority
 1. Design Professionals' Liens CANNOT take priority over a construction lender's encumbrance if that lender "*funds the loan*" for the work of improvement for which the design professional provided services. (§8316)
 2. Conversion to Mechanics' Lien: if the design professional records a mechanics' lien conversion within 30 days of expiration of the design professionals' lien the *mechanics' lien* "shall be effective as of the date of recordation of this mechanics' lien AND shall be given priority pursuant to the provisions of Section 8450." (§ 8319) Mechanics' Lien priority is tied to *commencement of the work of improvement*, therefore a converted design professionals' lien will relate *forward* to the commencement of work.

IV. STOP PAYMENT NOTICE

V. STOP WORK NOTICE

VI. Good Resources on Liens and Related Remedies

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- CEB Manual: *California Mechanics' Liens and Related Construction Remedies* (available to new attorneys for free via <http://onlaw.ceb.com/>)
- Miller & Starr, *Real Property*
- Matthew Bender, *California Forms of Pleading & Practice*

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MECHANICS' LIEN CHECKLIST

1. Who did you contract with?
 - a. Owner: _____
 - b. Other: _____
 - i. Did you serve Preliminary Notice on all necessary parties (Owner/GC/Lender)?
 1. YES: _____
 2. NO: _____
 - a. If NO, is there still time to file?
 - b. If not, no lien rights
2. When did you finish/stop work? (specific date) _____
3. Was a Notice of Completion Recorded?
 - a. YES: _____
 - i. When: _____
 - ii. Has more than 60 days passed? (Owner) _____
 - iii. Has more than 30 days passed?(Other) _____
 - iv. If yes to either ii or iii, no lien rights
 - b. NO: _____
4. Was a Notice of Cessation of Labor Recorded?
 - a. YES: _____
 - i. When: _____
 - ii. Has more than 60 days passed? (Owner) _____
 - iii. Has more than 30 days passed? (Other) _____
 - iv. If yes to ii or iii, no lien rights
 - b. NO: _____
5. Has work been Completed? (Apply if answer to #3 and #4 are no)
 - i. Actual completion of the work or improvement
 - ii. Occupancy or use by owner accompanied by cessation of labor
 - iii. Cessation of labor for a continuance period of 60 days
 - iv. Recordation of notice of cessation after cessation of labor for a continuous period of 30 days
 - v. Acceptance of public agency
 - a. YES: _____
 - i. When: _____
 - ii. Has more than 90 days passed? _____
 - iii. If so, no lien rights
 - b. NO: _____
 - i. Still have lien rights
6. If client recorded mechanics' lien directly
 - a. When: _____
 - b. Has more than 90 days passed? _____

- i. YES: _____
 - 1. No lien rights
- ii. NO: _____
 - 1. File foreclosure action before expiration of 90 days!

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DESIGN PROFESSIONALS' LIEN CHECKLIST

1. Has work began: _____
 - a. If YES: No lien rights
 - b. If NO, continue
2. Project: Single Family Residence? _____
 - a. Cost less than \$100,000 _____
 - b. If YES, no lien rights
3. Written Contract? _____
 - a. If YES, continue
 - b. If NO, no lien rights
4. Contract with Owner? _____
 - a. If YES, continue
 - b. If NO, no lien rights
5. Governmental Approval? _____
 - a. Building Permit: _____
 - b. Tentative Tract Map: _____
 - c. If YES, continue
 - d. If NO, no lien rights
6. Default or Refusal to Pay? _____
7. When did you learn Owner did not Intend to go forward with Project? _____
 - a. Has more than 80 day's passed? _____
 - a. If YES, no lien rights
 - b. If NO, continue
8. 10 Day Preliminary Notice: _____
9. File Lien at expiration of 10 days
10. File Foreclosure Action within 90 days

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11. If design professional lien recorded and work started, can it be converted to a mechanics' lien?
 - a. Lien remains fully or partially unpaid _____
 - b. Has more than 30 days passed?
 - i. If YES, cannot convert
 - ii. If NO, record mechanics' lien
 - c. mechanics' lien states that it is a converted design professional lien